ALBERTA OMBUDSMAN

Focused on Fairness

April 1, 2010 through March 31, 2011

44th Annual Report

ALBERTA OMBUDSMAN
Focused on Fairness

August 2011

The Honourable Ken Kowalski
Speaker of the Legislative Assembly
325 Legislature Building
10800 - 97 Avenue NW
Edmonton, AB T5K 2B6

Dear Mr. Speaker:

The Office of the Ombudsman is pleased to present its 44th Annual Report to you and through you, to the Legislative Assembly.

The Report has been prepared in accordance with Section 28(1) of the *Ombudsman Act* and covers the activities of the Office of the Ombudsman for the period April 1, 2010 through March 31, 2011.

Respectfully,

G. B. (Gord) Button
Alberta Ombudsman

cc: Dr. David McNeil, Clerk of the Legislative Assembly

ALBERTA OMBUDSMAN

Focused on Fairness

VISION, MISSION AND VALUES

VISION

The Alberta Ombudsman is the recognized leader for independent investigation, promotion and support of administrative fairness.

MISSION

The Alberta Ombudsman independently and impartially promotes high standards of administrative fairness through investigations, recommendations for change and education.

VALUES

To obtain our Vision and deliver our Mission, our Values are fundamental to all our interactions and communications.

We Value:

Fairness
Competency
Respect
Integrity
Equity and
Confidentiality

We also value a working environment that fosters personal and professional growth and development, collaboration and teamwork, and innovation and creativity.

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Focused on Fairness

April 1, 2010 through March 31, 2011

MESSAGE FROM THE OMBUDSMAN

MESSAGE FROM THE OMBUDSMAN

Cathy Giblin, Registrar/Director of Registration Services, College and Association of Registered Nurses of Alberta, was very proactive in implementing the Ombudsman's recommendations to develop a complaint handling policy.

INTRODUCTION

It is my privilege to introduce the 44th Annual Report of the Alberta Ombudsman for fiscal year 2010/2011. This is also my eighth and final report to the Legislative Assembly of Alberta and through the Legislative Assembly, to the people of Alberta. I will be retiring later this summer and the process is now underway to identify my successor. It has been a great honour to be appointed an Officer of the Legislative Assembly of Alberta and in that capacity to provide this valuable service to Albertans. In this, one of my last acts as your Alberta Ombudsman, I will look back at some of the significant accomplishments of my Office over the past eight years and glance ahead to share some of my thoughts about what is in its future. As usual, I will provide you with a sample of case summaries and significant investigations from the past year to give you a flavour of some of the work we have completed and help the reader better understand the principles of administrative fairness that we are mandated to uphold. I will also include a statistical overview and a recap of our financial statements for the past year, as well as an update on our achievements with regard to the objectives set out in our business plan.

As I look back over the past eight years, I see significant change in this Office. Out of a relatively small complement of 25, only eight staff remain from those who were here when I was appointed. However, we have attracted talented and dedicated people to replace those who left and to fill new positions created that has ensured we continue to deliver an excellent level of service to Albertans. The Office will face a challenging transition this year as my Deputy Ombudsman, Pamela McHugh, and I are retiring. I am confident the strong team of dedicated professionals remaining will ensure there is no perceivable change in the service provided during the transition period.

One challenge for an Ombudsman office is to promote awareness and understanding of the services we provide. This can be difficult due in part to the very confidential nature of how we carry out our work pursuant to the provisions of the *Ombudsman Act*. However, as I think back over these past years, I am buoyed by the gratitude shown by many citizens we served and the respect and cooperation extended to us by the representatives of the departments and other authorities we investigated. I believe the true test of an Ombudsman is the ability to promote effective change and continuing improvement in the services provided to citizens by its government and other organizations. Some examples that come to mind are a significant reduction in complaints from within provincial correctional centres. These complaints have dropped from 25% of our caseload when I arrived to 8% last year. I believe the findings of administrative unfairness in complaint handling

processes and changes implemented as a result of our recommendations to the department had a tremendous impact on improving this situation. I have also witnessed significant improvements in the processes used to deliver other services such as Protection for Persons in Care and Citizens' Appeal Panels that have contributed to improved fairness for the citizens they serve. As a direct result of our own motion investigation, we have seen significant improvements in how the Out-of-Country Health Services program is delivered. We are also witnessing needed changes in the complaint handling and governance processes of the various health profession colleges as they work to comply with the *Health Professions Act*. There are other examples too numerous to mention. However, I am thankful for the willingness of people in authority to recognize administrative unfairness when it exists and work cooperatively with this Office to make changes that will ensure continuous improvement.

Angelina Leung, Executive Director of Tax Services, Alberta Finance and Enterprise, demonstrated creativity in implementing the Ombudsman's recommendations to amend an entrenched process.

As I look to the future, I see challenges and opportunities for the Alberta Ombudsman's office. The forthcoming appointment of a new Ombudsman and eventual replacement of the Deputy Ombudsman will require a concerted effort by the remaining staff and managers to maintain appropriate services while assisting the new incumbents as they negotiate the learning curve they face. However, change is inevitable and necessary in all organizations and I am confident this one will reinvigorate this Office and ensure it continues to provide a very necessary service to all Albertans.

In previous years, I have commented on the urgent need to increase the capacity of this Office in two areas. The first is the need to create a team of investigators to focus on large scale systemic or own motion investigations. This would provide the capacity to undertake broadly focused investigations of programs, departments or professional organizations to identify systemic administrative unfairness and pursue opportunities for meaningful improvements when warranted. The second capacity that requires development is the creation of a team of dedicated and well trained alternate dispute resolution professionals who could pursue problem resolution through less formal means within the spirit and intent of our Alternative Complaint Resolution process. Both of these initiatives were discussed thoroughly with the Standing Committee on Legislative Offices during negotiations leading to my reappointment in 2008 which resulted in a proposal for a commensurate budget increase to support these innovations that fall. Although the Committee supported the initiatives in principle, as a result of fiscal restraint priorities, the required funding has not been made available to me to move ahead with these initiatives. I will be encouraging my successor to continue efforts to bring these initiatives to fruition.

Lucille Bernard, former Manager, Regional Services North, Employment Standards Branch, not only implemented the Ombudsman's recommendation for a detailed letter of explanation to an employee about the content of a settlement agreement, but also acted to bring the issues arising from this investigation forward to Branch staff to reinforce the importance of file documentation and administrative fairness.

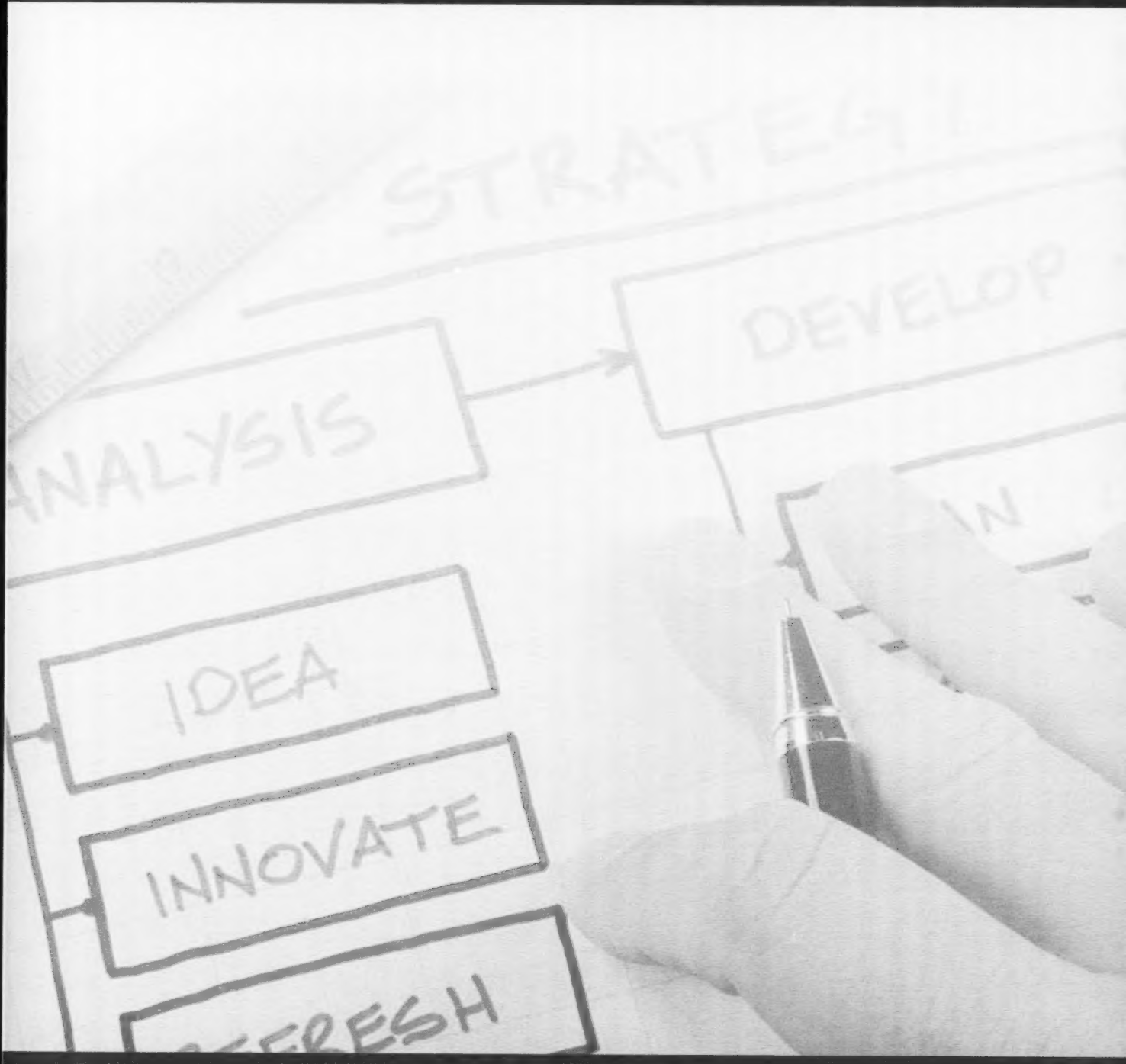
In closing, I would like to acknowledge the support I have enjoyed over these last eight years that enabled me to enjoy whatever success I had as the Alberta Ombudsman. I could not have accomplished it without the effort and commitment of a dedicated team of investigators, complaints analysts, administrative support, executive assistant and managers both past and present. They continually rise to the challenge no matter how daunting the task presented. I wish them well. I am also indebted to the deputy ministers of government departments and administrative heads of agencies, boards, commissions and various professional organizations who always extended their welcoming spirit of cooperation, even in the face of criticism that I may have been presenting about the services provided by them. Finally, I want to acknowledge the support of the Legislative Assembly of Alberta and the Standing Committee on Legislative Offices for the honour and trust they bestowed upon me by appointing me as the Alberta Ombudsman and continuing to offer their support over the past eight years.

It has been my distinct honour to serve the people of Alberta and I wish you all peace, good health and prosperity.

G. B. (Gord) Button
Alberta Ombudsman

"It has been a great honour to be appointed an Officer of the Legislative Assembly of Alberta and in that capacity to provide this valuable service to Albertans."

BUSINESS PLAN UPDATE



BUSINESS PLAN UPDATE

Our 2007/08 – 2010/11 Strategic Business Plan is a tool we use for guidance and future direction. We review and update the Plan annually.

We identified four core objectives to accomplish our goals. They are:

- manage the workload in an efficient and effective manner;
- excel in investigations;
- support workplace wellness and staff development; and
- enhance the knowledge and understanding of the role of the Ombudsman.

The following tables provide oral and written response targets and results:

Target	2010/11 Actual	2009/10 Actual
90% of telephone inquiries responded to	95% within 2 hours	95% within 2 hours
within 4 hours	100% within 4 hours	100% within 4 hours

File Closure – All Written Files Target	2010/11 Actual	2009/10 Actual
75% of files completed within 90 days	81%	83%
80% of files completed within 180 days	84%	86%
90% of files completed within 1 year	91%	91%
100% of files completed within 2 years	99%	97%

OUR ROLE

The Alberta Ombudsman has the authority to investigate decisions, actions and recommendations made by a jurisdictional authority. Individuals who have concerns or complaints about the fairness of administrative actions by Alberta government departments, agencies, boards, commissions, designated professional organizations and the patient concerns resolution process of Alberta Health Services may bring these matters to the Ombudsman. Contact may be made by a phone call to the Office, through a letter, through the online complaint form located on our website or in person.

If the initial contact is made by phone, the call will be directed to an intake officer who determines the caller's issues and whether the concern is with an agency jurisdictional to the Ombudsman. If the concern is not jurisdictional, the caller is referred to the appropriate source for information or assistance.

APPEAL MECHANISMS

The caller may have a concern regarding the actions of a jurisdictional body but may not have used all available appeal processes. The *Ombudsman Act* requires complainants to pursue resolution through these processes before seeking help from the Ombudsman. If all appeal processes are not exhausted, the intake officer will provide information on options and processes available to the caller.

Callers with a jurisdictional complaint who have completed the appeal processes may be able to resolve their complaint through Informal Resolution. For example, the caller may be an inmate who brought a concern to the correctional centre director but has not received a response. Rather than ask the inmate to make a formal written complaint to the Ombudsman, the intake officer may contact the director, provide information and inquire about the status of the inmate's concern. The intake officer may determine the director's response was sent but not received or the call may prompt a more timely response to the inmate. Whatever the outcome, such informal action by our Office is an attempt to successfully resolve the issue in a timely fashion.

For all other oral complaints, the intake officer explains the process of making a written complaint by online complaint form or by letter. The caller is advised of the process that occurs once the Ombudsman receives a written complaint.

OUR ROLE

COMPLAINT ANALYSIS

The *Ombudsman Act* states all complaints to the Ombudsman shall be in writing. A complaints analyst reviews written complaints. The analyst will consider whether:

- the complaint is about a department or agency under the authority of the *Ombudsman Act*;
- the complainant has exhausted all avenues of appeal;
- the complaint is a matter before the courts;
- the complainant has been directly affected by the action or decision being complained about;
- the complainant has third party representation; and
- the complainant has come forward in a timely manner.

The analyst will also identify the issues within the complaint. Anonymous complaints are not acted upon.

If the Ombudsman accepts the complaint, there are two options for resolution: an Alternative Complaint Resolution may be attempted or the matter may proceed to a formal investigation. In both cases, the file is assigned to an investigator.

ALTERNATIVE COMPLAINT RESOLUTION

The Alternative Complaint Resolution (ACR) process is a less formal process for handling complaints. It may be pursued for the following complaints:

- those which may have a reasonable chance of resolution within 21 days;
- those which involve fewer or less complex issues and are specific to the complainant; and
- where a less formal complaint resolution would be appropriate.

In order to proceed with ACR, the process must be agreed to by both the complainant and the complained-about department. After the issues are clarified with the complainant, a department representative is contacted and possible avenues of resolution are discussed. Examples of potential resolutions include the provision of additional information exchanged between parties or negotiation of further actions by either party. The Ombudsman's investigator facilitates the complaint resolution but does not advocate for the interests of either party. If the matter is successfully resolved, the file is closed. If ACR is unsuccessful, the matter is reconsidered for formal investigation.

FORMAL INVESTIGATION

A formal investigation begins with correspondence to the complainant and the Deputy Minister responsible for the department or the head of the agency. If the complaint involves actions of more than one department, files are opened with each department. The correspondence outlines the parameters of the issues for investigation and the letter to the department usually includes a copy of the complaint letter or the details from the online complaint form. The department is asked to provide a written response, which should include all relevant documentation, policy and legislation. The investigator reviews this response and file materials relevant to the complaint and interviews appropriate department staff members to determine if there is additional information related to the identified issues. The investigator also interviews the complainant to obtain any additional information or clarification of the issues. The investigator may interview anyone believed to have information relevant to the investigation and request copies of all pertinent documents that the complainant or others may have in their possession.

Once all information is gathered, the investigator analyzes the information based on the principles of administrative fairness and prepares an Investigation Report. This report identifies the issues investigated and provides background for the complaint. Information relevant to each issue is described and analyzed and conclusions are explained. Based on the analysis and conclusions, the investigator recommends a resolution for each issue to the Ombudsman.

ADMINISTRATIVE UNFAIRNESS

If administrative unfairness is identified, the issue is supported. The issue is not supported if the action or decision did not demonstrate administrative unfairness and were consistent with legislation, policy and the principles of administrative fairness. For administratively unfair issues, the Ombudsman recommends a remedy which must be consistent with the nature of the unfairness. For example, if a decision was written in an administratively unfair manner, the Ombudsman may recommend the decision be rewritten or amended to rectify the deficiencies. If a hearing was conducted in an administratively unfair manner, the Ombudsman may recommend the decision be set aside and a new hearing held.

INVESTIGATION CONCLUSION

At the conclusion of the investigation, the Ombudsman reports his findings on unsupported complaints to the complainant and the department or agency investigated. The decision identifies each issue investigated and the findings or conclusions.

On supported complaints, the Ombudsman shares his findings and recommendations with the Deputy Minister of the department or agency head and gives that person the opportunity to respond. When the Ombudsman makes a recommendation, he relies on the power of persuasion as he does not have the authority to require an action. There are occasions when the Deputy Minister or agency head agrees with the findings of administrative unfairness but will offer a different option for resolution. The recommendation for final resolution will be one which is acceptable to both the Ombudsman and the Deputy Minister or agency head. Once agreement is reached on a resolution, the conclusion is shared with the complainant. On the very rare occasion when no agreement is reached between the Ombudsman and the Deputy Minister or agency head, the Ombudsman has the power to report to the Minister, the Lieutenant Governor in Council and ultimately to the Legislature.

Most recommendations for resolution result in an action that directly impacts the complainant. Other recommendations correct a systemic issue that affects more than one person and improves the process or system within a department or agency.

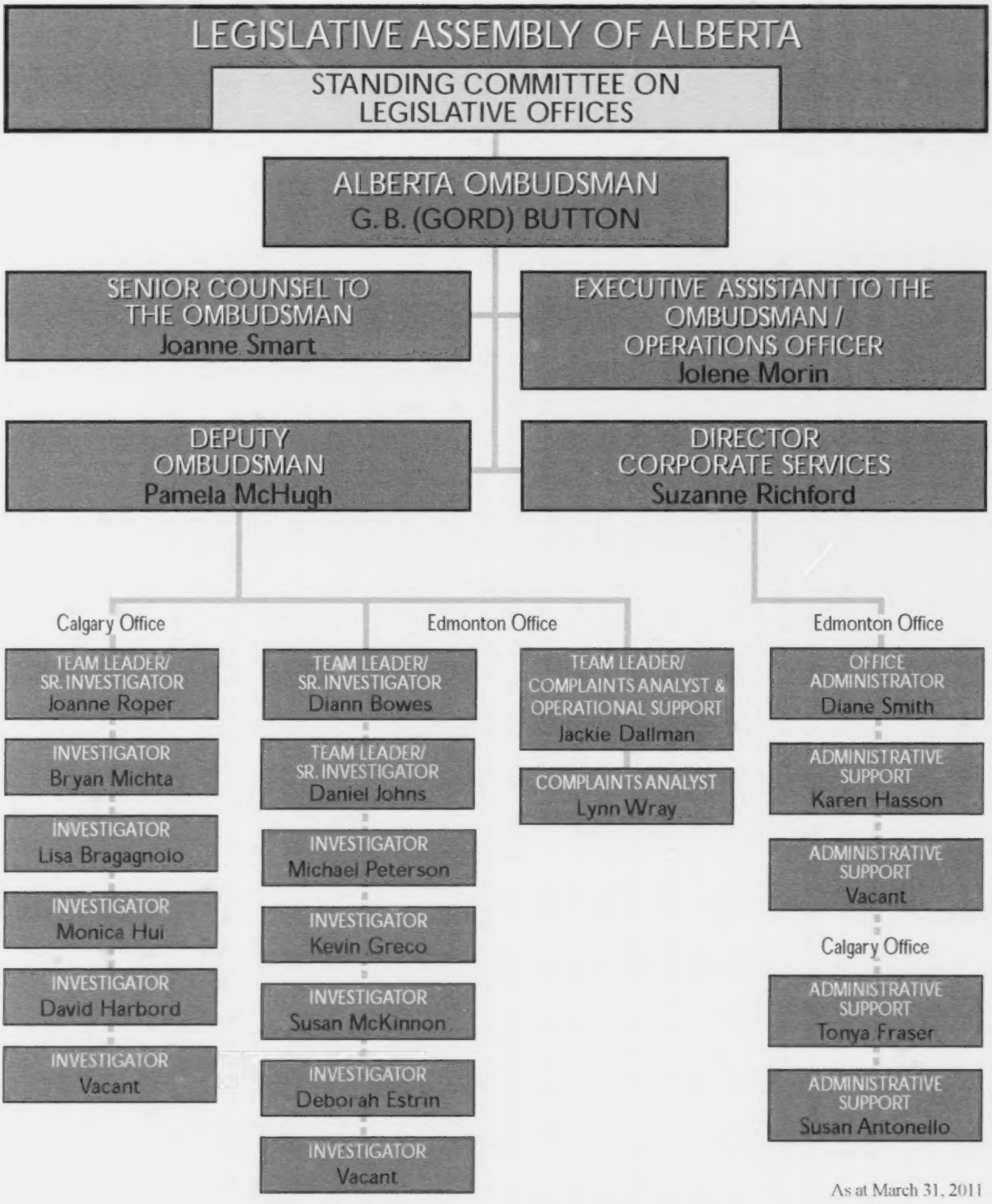
OWN MOTION INVESTIGATIONS

The Ombudsman has an additional investigative power to conduct an own motion investigation, initiated at his own discretion. For example, an own motion investigation may result from a number of questions about the administrative fairness of a program that have come to the Ombudsman's attention through various investigations. When commencing an own motion investigation, the Ombudsman advises the Minister and the public and reports publicly on his findings upon conclusion.

COMMITTEE-REFERRED OR MINISTERIALLY-ORDERED INVESTIGATIONS

The *Ombudsman Act* contains two other ways in which the Ombudsman may commence an investigation: a committee of the Legislative Assembly may refer a matter to the Ombudsman for investigation or a Minister of the Crown may order the Ombudsman to conduct an investigation.

ORGANIZATIONAL CHART



As at March 31, 2011

YEAR IN REVIEW

YEAR IN REVIEW

April 1, 2010 through March 31, 2011

Of the 770 written complaints received, the most common authorities by volume of complaints are:

Alberta Solicitor General and Ministry of Public Security
7.9%

Alberta Employment and Immigration
7.7%

Workers' Compensation Board
6.6%

Alberta Justice and Attorney General
6.2%

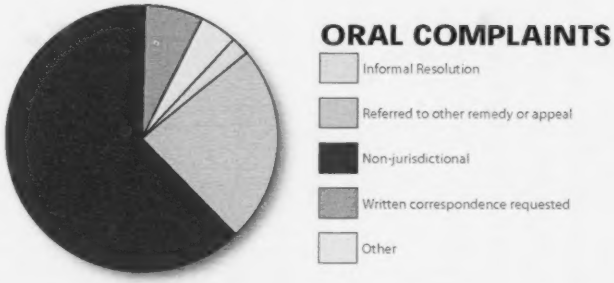
Appeals Commission for Alberta Workers' Compensation
4.5%

Alberta Children and Youth Services
4.2%

Alberta Seniors and Community Supports
3.8%

ATB Financial
2.3%

4,047 Oral complaints received
101 Informal Resolution *
964 Referred to other remedy or appeal
2,528 Non-jurisdictional
284 Written correspondence requested
170 Other



770 Written complaints received
128 New formal investigations
34 New Alternative Complaint Resolution (ACR) files
608 Declined for investigation (referred to other remedy or non-jurisdictional)

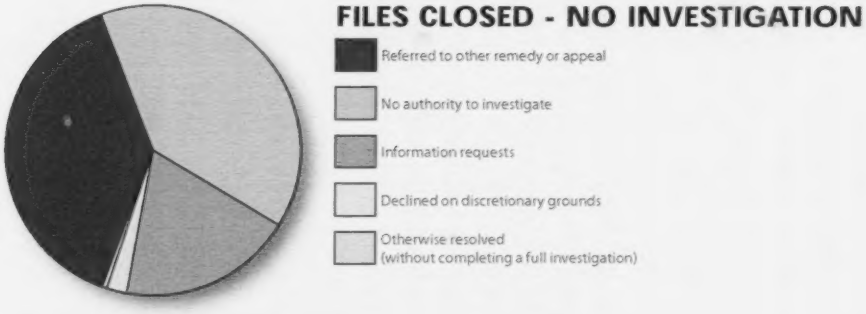
*2.5% of oral complaints received were resolved in discussion with the authority without requiring a formal investigation.

305 Files carried forward from previous years

839 Files closed as of March 31, 2011

172 Formal investigations completed containing 239 issues
- 64 Supported issues
- 34 Partially supported issues
- 110 Unsupported issues
- 31 Discontinued issues

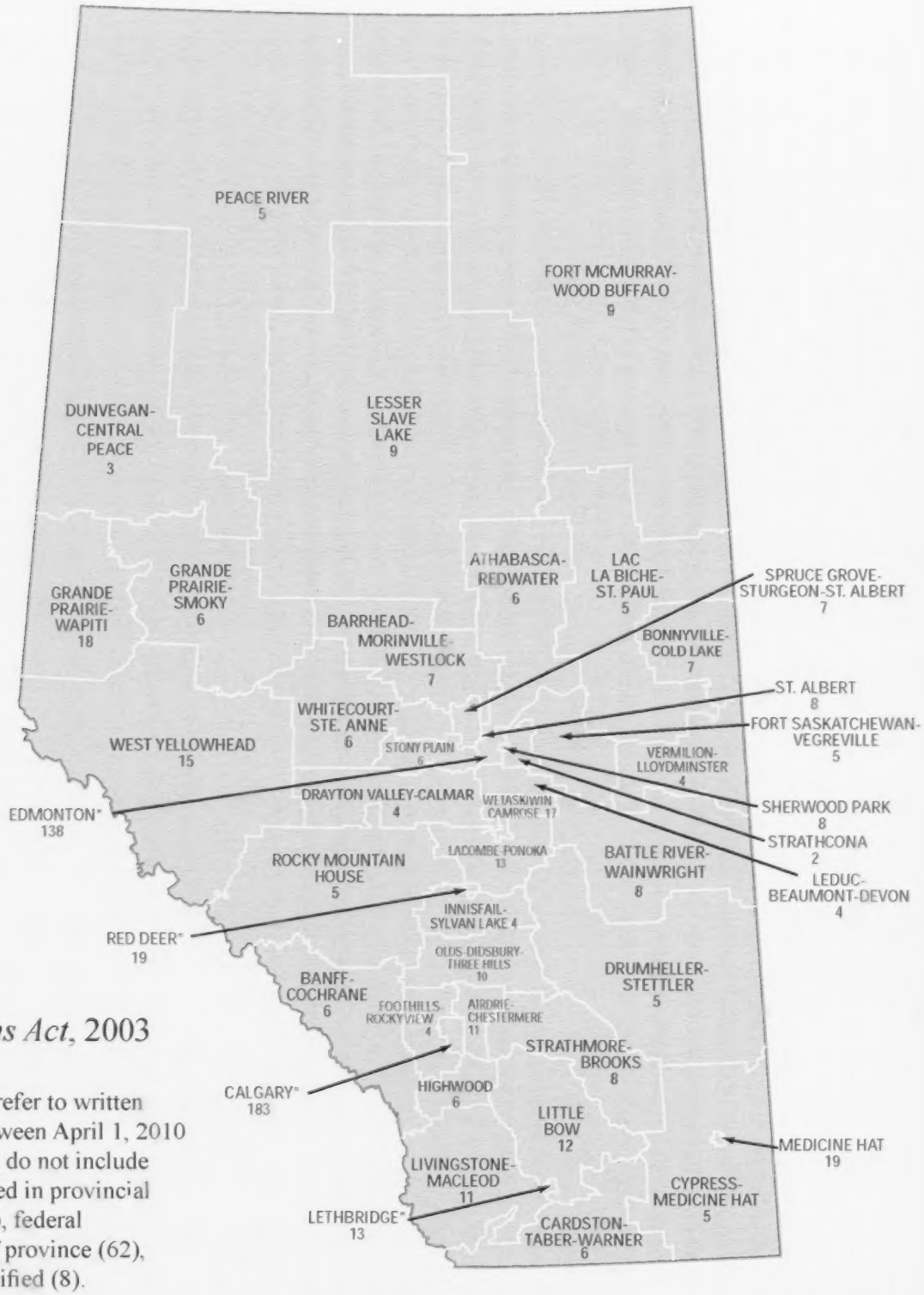
628 No investigation initiated
- 243 Referred to other remedy or appeal
- 248 No authority to investigate
- 120 Information requests
- 14 Declined on discretionary grounds
- 3 Otherwise resolved (without completing a full investigation)


FILES CLOSED - NO INVESTIGATION
Referred to other remedy or appeal
No authority to investigate
Information requests
Declined on discretionary grounds
Otherwise resolved
(without completing a full investigation)

39 ACR files closed containing 45 issues
- 43 Issues successfully resolved through ACR
- 0 Unsuccessful; transferred to formal investigation
- 2 Discontinued issues

236 Files carried forward to 2011/12

COMPLAINTS BY ELECTORAL DIVISION



PROVINCIAL ELECTORAL DIVISIONS

as defined by the
Electoral Divisions Act, 2003

The figures on the map refer to written complaints received between April 1, 2010 and March 31, 2011 and do not include complaints that originated in provincial correctional centres (46), federal penitentiaries (7), out of province (62), and no city/address specified (8).

*denotes multiple electoral divisions in region (see following page for details).

COMPLAINTS BY ELECTORAL DIVISION

BREAKDOWN OF ELECTORAL DIVISIONS WITH MULTIPLE CONSTITUENCY OFFICES

Edmonton Constituency Offices:

Beverly-Clareview	5
Calder	6
Castle Downs	12
Centre	25
Decore	1
Ellerslie	3
Glenora	8
Gold bar	9
Highlands-Norwood	10
Manning	6
Mcclung	6
Meadowlark	7
Mill Creek	4
Mill Woods	8
Riverview	8
Rutherford	5
Strathcona	8
Whitemud	5
Unknown	2
	Total 138

Red Deer Constituency Offices:

North	11
South	7
Unknown	1
	Total 19

COMPLAINTS BY ELECTORAL DIVISION

BREAKDOWN OF ELECTORAL DIVISIONS WITH MULTIPLE CONSTITUENCY OFFICES

Calgary Constituency Offices:

Bow	11
Buffalo	12
Cross	11
Currie	6
East	5
Egmont	10
Elbow	6
Fish Creek	6
Foothills	6
Fort	10
Glenmore	5
Hays	9
Lougheed	9
Mackay	5
Mccall	13
Montrose	4
Mountain View	4
North Hill	8
North West	6
Nose Hill	13
Shaw	8
Varsity	6
West	8
Unknown	2
	Total 183

Lethbridge Constituency Offices:

East	4
West	7
Unknown	2
	Total 13

ADMINISTRATIVE FAIRNESS

ADMINISTRATIVE FAIRNESS GUIDELINES

Through the investigative process, we determine whether the actions or decisions that resulted in a complaint are administratively fair. We determine fairness by applying the following guidelines to each case.

1. ***Chain of legislative authority.*** What legislation created the authority or power to make a decision and to which decision-maker was the power granted?

2. ***Duty of fairness.*** The courts require that decision-making that affects the rights of individuals must follow a fair process. This duty of fairness means there must be procedural fairness in decision-making. We look for greater procedural protection if there is:
   - no right of appeal established within the statute;
   - no further appeal mechanism within the department, agency, board or professional body; and
   - a substantial effect on the individual's rights (i.e., loss of financial benefits).

3. ***Participation rights.*** Was the complainant given a full and fair opportunity to present the case to the decision-maker? Was the case against the person fully disclosed to the person?

4. ***Adequate reasons.*** There must be a rational connection between the evidence presented and the conclusions reached by the decision-maker. The decision-maker must identify and clearly communicate the decision and the reasons for the decision.

5. ***Reasonable apprehension of bias.*** We look for impartiality and independence of the decision-maker including relationships to all parties in the matter, both internally and externally.

6. ***Legitimate expectation.*** Did the decision-maker fail to honour a commitment or follow regular procedures?

7. ***Exercising discretionary power.*** We look at how discretion is established in the Act, Regulation, Policy, Guidelines, etc. Discretionary decisions are reviewed to determine if there is evidence of bad faith, improper purpose or irrelevant considerations.

8. ***Was the decision reasonable?*** A reasonable decision does not equate to whether the decision is wrong or whether a different conclusion could have been reached. A reasonable decision shows how the decision-maker considered and assessed the arguments and evidence.

ADMINISTRATIVE FAIRNESS CASE SUMMARIES

This section explains how the administrative fairness principles are applied by the Alberta Ombudsman and illustrates examples of cases where recommendations by the Ombudsman resulted in improved processes.

1. CHAIN OF LEGISLATIVE AUTHORITY

When commencing an investigation, we examine the relevant legislation since all powers of government departments, agencies, boards, commissions, designated professional organizations and the patient concerns resolution process of Alberta Health Services are derived from statute. We determine whether the legislation has delegated decision-making powers to a legislated entity or an individual. A statute may grant the organization the ability to make regulations and grant decision-making power or it may grant the decision-maker the authority to exercise discretion based on parameters set out in regulation or in directives or policy.

If there are no specific powers in the legislation, we look at the *Government Organization Act*. This Act establishes the general authority of a department or agency to create programs, delegate powers, enter into agreements and establish boards or tribunals.

Once legislative authority is determined, we determine whether the decision-maker had the authority or understood he or she had the authority to make the decision and whether it was made in a manner consistent with that required in legislation, regulation or policy. We also confirm the relied upon legislation, regulation or policy was valid at the time of the decision.

Case summary: Alberta Seniors and Community Supports

An applicant for **Assured Income for the Severely Handicapped** (AISH) benefits complained the rationale used to deny his eligibility for AISH benefits was not in accordance with legislation. The Ombudsman's investigation found that because of the wording of the policy regarding eligibility criteria, there was a risk for decision-makers that a more limited interpretation of a provision in the legislation relating to ability to earn a livelihood could be made than what was intended in the legislation. The Ombudsman's recommendation that a legal review be undertaken to ensure the spirit of the legislation is being followed, resulted in a legal opinion confirming the policy on severe handicap was not aligned with the legislative definition of severe handicap. Policy has now been revised and the department has rewritten its information brochures to provide better information on the eligibility criteria. By this point in time, the applicant had been found eligible for AISH benefits after submitting further medical information.

Case summary: Alberta Employment and Immigration

There is an obligation on a decision-maker to not only follow the chain of legislative authority, but to demonstrate how that chain was followed. An Assured Income for the Severely Handicapped benefit recipient complained his appeal of the decision to deny reimbursement for the costs of a postoperative caregiver was unfairly denied. The recipient pointed to a copy of a policy provided by the AISH worker which he felt supported his decision to hire a caregiver. In its decision, the **Citizens' Appeal Panel** determined the recipient misinterpreted this policy, but not only did the Panel fail to explain how the policy was misinterpreted, it failed to explain how the policy should be properly interpreted. The Ombudsman's recommendation for a rehearing resulted in a new decision to grant the reimbursement request on the grounds the recipient did indeed meet the criteria under a different subsection of the same policy. In its new decision, the Panel provided a satisfactory explanation of its application of the policy.

Case summary: Out-of-Country Health Services Appeal Panel

A patient complained the **Out-of-Country Health Services Appeal Panel** upheld the decision to deny reimbursement of medical costs he had incurred in the United States. The Appeal Panel decision was issued almost six months after the public report *Prescription for Fairness* was issued by the Ombudsman identifying a number of systemic problems with the Appeal Panel process and making recommendations for change which were accepted by the Appeal Panel. The Ombudsman's investigation found, in this case, that the Appeal Panel concluded it had no jurisdiction to consider the appeal because if failed to meet the requirements of the legislation. However, after making that determination, the Appeal Panel continued to adjudicate the merits of the appeal. The Ombudsman reported this administrative error to the newly appointed Chair of the Appeal Panel and noted that a rewrite of the decision would normally be recommended; however, in this case, such a recommendation would not provide any further detail to the patient.

2. DUTY OF FAIRNESS

The courts require decisions affecting the rights of individuals must follow a fair process. Decisions made by administrative bodies often have a more immediate and profound impact on people's lives than a court decision. Flowing from these decisions is a duty to act fairly and to make procedurally fair decisions. It is the Ombudsman's legislative mandate to investigate complaints about the administrative fairness of decisions made by Alberta government departments, agencies, boards, commissions, designated professional organizations and the patient concerns resolution process of Alberta Health Services.

The duty of fairness is flexible and variable, depending on the statute involved and the nature of the decision. The degree of fairness required is dependent on the effect of the decision on the rights of the individual and whether legislation established an avenue of appeal. If there is no established right of appeal, or if the individual has appealed to the final level of decision-making, the requirement for procedural protection, or fairness, is greater.

Procedures used by decision-makers vary depending on several factors, including:

- the nature of the decision;
- the level of legal sophistication and expertise of the decision-makers; and
- whether this is the last level of consideration.

For example, a government employee's decision in response to a citizen's request may be communicated differently from the decision of an administrative tribunal. The **Maintenance Enforcement Program** frequently communicates with clients through email due to the high volume of interactions with clients. An email response in some situations is deemed sufficient and administratively fair. In other situations, email is inadequate and therefore unfair.

Greater procedural protection is required when there is a substantial effect on an individual's rights such as loss of financial benefits, licence cancellation, disciplinary suspension or the right to continue in a profession or employment. Professional regulatory bodies under the *Health Professions Act* have stringent discipline procedures for their members set out in legislation and regulation. Administrative fairness requires strict adherence to the rules.

A decision of the **Appeals Commission for Alberta Workers' Compensation** is an example of a final avenue of appeal where the decision has a significant impact on the individual worker. The Appeals Commission Rules of Procedure include rules such as notice and disclosure, recording of proceedings and requirements of written decisions. The Appeals Commission meets the duty of fairness by following the established rules.

Case summary: College and Association of Registered Nurses of Alberta

A nurse complained of unfair management of her complaint about delay and poor communication concerning the reinstatement of her registration by the **College and Association of Registered Nurses of Alberta** (CARNA). The Ombudsman's investigation found the Complaints Director was involved in an unsuccessful effort to resolve the complaint. The Ombudsman determined it was inappropriate for the Complaints Director to be involved as the Acting Registrar had already been directly involved with the registration application, and the matter

should have been managed by the executive level of the organization, rather than the operational level. The Ombudsman recommended CARNA develop a complaint handling process to ensure complaints are forwarded to the appropriate person, at the appropriate level, for response. CARNA has accepted and implemented the Ombudsman's recommendation.

The Ombudsman's investigation also found the responses the nurse provided regarding registration requirements was consistent with legislation, regulation and policy and that the information provided by registration staff was administratively fair. There was an inconsistency with policy noted in the information contained on the CARNA website that has since been corrected. Finally, there was a two week delay in the response to an initial email inquiry from the applicant about the registration requirements that was acknowledged and addressed by the Registrar/Director of Registration Services.

Case summary: Appeals Commission for Alberta Workers' Compensation

An appellant complained a hearing panel of the **Appeals Commission for Alberta Workers' Compensation** overlooked important medical evidence; failed to address arguments; and failed to provide adequate reasons for the denial of her appeal. The Ombudsman's investigation reviewed the appeal process and found administrative unfairness in a number of areas: there was inadequate written notice of the hearing date to all parties; a lack of provision of all evidence and submissions in time for the parties to adequately review them and provide responses; a release of confidential information concerning the appeal without adequate control and documentation; and there was a perceived lack of impartiality and independence in the decision-making process, including the relationship of all parties in the matter.

The Ombudsman also determined there was administrative unfairness in the written decision of the hearing panel. The decision did not demonstrate that all medical submissions and arguments put forward at the time of the hearing had been considered; it did not adequately cite the legislation and demonstrate how the appellant's arguments had been considered; and there were errors in dates and identification of medical evidence which raised concerns about the adequacy of the consideration that was given to the medical evidence.

The Ombudsman's recommendation for a rehearing of the appeal was fully accepted by the Appeals Commission.

3. PARTICIPATION RIGHTS

There are two elements to participation rights. First, a person is entitled to a full and fair opportunity to present his or her case to the decision-maker. A government department, agency, board, commission, designated professional organization or the patient concerns resolution process of Alberta Health Services demonstrates this by requesting information from the person and ensuring sufficient time for the person to respond. A tribunal invites all parties to provide written submissions or present orally at a hearing, ensuring there is sufficient notice of the hearing. The tribunal provides a meaningful opportunity to be heard when all parties have sufficient time to state their position.

Citizens' Appeal Panels protect participation rights in a tribunal process. Persons who disagree with decisions about certain financial benefits have the right to appeal those decisions to the Panel. Appellants are notified in writing of the hearing time, date and place. At the hearing, appellants may make a presentation, either orally or in writing, and may make a final statement prior to the hearing's conclusion.

Another example is the **Alberta Human Rights Commission** process. During the Commission's investigative process, information obtained during interviews is transcribed and submitted to the interviewee. The person may then correct errors or omissions before decisions are made about the issue under investigation.

The second element of participation rights is a person's entitlement to full disclosure of the case. This includes access to any report or information that a decision-maker has relied upon to make a decision.

Case summary: Alberta Employment and Immigration

> An individual complained he received conflicting information from **Employment Standards** about the availability of an appeal of a wage settlement decision. His request for an appeal was based on concerns the investigation of his claim was not properly conducted. The Ombudsman found the individual received all legal entitlements and agreed to a voluntary settlement from which the only available appeal is through the courts.

However, during the course of this investigation, the Ombudsman found Employment Standards failed to provide the claimant with the same documentation that had been provided to the other party involved in the claim. While the content of the documentation was discussed with the individual, he signed the settlement agreement without having either the documentation in front of him or a written summary of the content of the documentation. The Ombudsman's recommendation for a comprehensive letter containing details of what was included in the agreement, an explanation of the legal entitlements, as well as information about available appeal options, was accepted.

4. ADEQUATE REASONS

Canadian courts imposed a common law obligation on administrative decision-makers to provide adequate written reasons. It is not enough to outline the evidence and arguments made by the parties. There must be a rational connection drawn between the evidence and the conclusions, including a clear explanation of how the relevant legislation, regulation or policy was applied. Decision-makers should not only explain what evidence was relied on to make the decision, but also what evidence was rejected and why it was rejected. A well-written decision must address the major arguments raised by all parties. Generally, it is only necessary to refer explicitly to evidence directly relevant to the issue. Decision-makers are not required to address every point or piece of evidence but they must address the major evidence they relied on or rejected to reach their decision.

The decision and reasons must be clearly communicated in language easily understood by a reasonably informed person. The decision should answer the question, "Why did the decision-maker make that decision?"

Case summary: Alberta Employment and Immigration

A complaint was received about a decision of the **Citizens' Appeal Panel** to deny emergency income support benefits. The Ombudsman found the Panel failed to provide a connection between the evidence presented and the conclusions. In addition, the Ombudsman found the decision quoted legislation not related to the circumstances in this case and failed to provide applicable legislative references to supports its conclusions. The Ombudsman's recommendation for an addendum was accepted by the Panel.

Case summary: Alberta Employment and Immigration

In another case involving a decision of the **Citizens' Appeal Panel** regarding eligibility for income support benefits, a number of administrative errors were identified by the Ombudsman including:

- failure to accurately identify the issue of appeal;
- failure to explain why certain issues raised in the appeal application were not addressed in the appeal decision;
- failure to address the arguments of the appellant;
- the irrelevant inclusion of a physical description of the appellant;
- failure to explain how legislation applied to the decision; and
- reasons for decision were nothing more than statements of conclusion with no explanation of the relationship between the evidence and the conclusion.

The Ombudsman's recommendation for a rehearing of this decision was accepted and implemented.

Case summary: Alberta Children and Youth Services

An investigation was conducted into a decision of the **Family Support for Children with Disabilities Appeal Committee** that it had no jurisdiction to hear an appeal for funding for an autism assistance service dog. The Ombudsman found that the Committee decision summarized only a portion of the arguments of the parties to the appeal and, as a result, there was an inadequate connection between the arguments and the conclusion to deny the appeal for funding. The Committee also failed to adequately reference that portion of the legislation which substantiates its lack of jurisdiction to grant the appeal. The Ombudsman recommended an addendum to the decision be prepared; however, the Committee was unable to comply with the recommendation as two of the three members who heard the appeal were no longer with the Committee.

Case summary: Workers' Compensation Board

A worker complained about the decision of the **Office of the Appeals Advisor** to withdraw further representation assistance regarding an appeal he wished to pursue to the Appeals Commission for Alberta Workers' Compensation. The Ombudsman found the decision letter to the worker failed to provide adequate reasons for the decision to withdraw services and did not explain the authority of the manager to make such a decision. The Ombudsman recommended a letter be sent to the worker explaining the evidentiary basis for the decision to withdraw services and the legislative authority allowing for the withdrawal of services, as well as the services that can reasonably be expected from the Office of the Appeals Advisor. That recommendation was accepted in its entirety.

5. REASONABLE APPREHENSION OF BIAS

Decision-makers must demonstrate impartiality and independence in making decisions. "Impartial" applies to the state of mind or attitude of the decision-maker so there is no bias, either real or perceived. Impartial decisions are based on objective criteria. To be "independent", the decision-maker must be free from interference by the executive and legislative branches of government and from other external forces such as business interests, corporate interests or other pressure groups.

A widely-quoted excerpt from a 1978 decision of the Supreme Court of Canada established the test for reasonable apprehension of bias:

> What would an informed person, viewing the matter realistically and practically ... conclude? Would he think that it is more likely than not that (the decision-maker), whether consciously or unconsciously, would not decide fairly?

To be impartial and independent, decision-makers should declare real or perceived conflicts of interest. The appearance of impartiality is necessary to maintain confidence in the decision-making process. In cases where it appears decision-makers are not objective even when they feel they could make an unbiased and fair decision, they are obligated to disclose the potential conflict or excuse themselves from the case.

Decision-makers should guard against forming opinions about the person or the case before reviewing the documentation and hearing from all parties. An appearance of bias might result from the behavior of a decision-maker at a hearing, such as repeatedly silencing a party or behaving in an overly aggressive or sarcastic manner. If the decision-maker was involved in the case prior to the hearing, it may appear to a reasonable person the decision-maker has prejudged the matter.

Case Summary: Alberta Finance and Enterprise

An accountant complained on behalf of his client that the **Tax and Revenue Administration** (TRA) section of Alberta Finance and Enterprise did not fairly consider a request that the client not have his taxes from tax years more than 10 years earlier reassessed by the province. The provincial reassessment occurred after the province learned the Canada Revenue Agency had reassessed the client's taxes. The accountant complained that TRA failed to waive interest that was calculated when the reassessment occurred.

The Ombudsman's investigation found the decision to conduct the reassessment was made fairly, although he recommended that the roles of the two decision-makers should be made clearer. The process calls for the reviewer to make a recommendation to the final decision-

maker. This did occur; however, the resulting written decision did not distinguish between the two decision-makers. The Ombudsman also recommended the written decision should identify the documents used to reach the decision. Both recommendations were accepted.

The more significant error was in the written decision which contained a statement speculating that a request to waive interest would likely be denied. As the complainant had yet to make the request and had not presented any arguments, this statement was made without knowing all the facts and could have influenced the decision-makers who subsequently reviewed and denied the request to waive interest. The Ombudsman's recommendation that the decision on waiving interest be reheard, was accepted.

6. LEGITIMATE EXPECTATION

The principle that regular practices or promises of the administrative decision-maker should be taken into account forms the basis of legitimate expectation. A person has a legitimate expectation that when an application form is submitted, the recipient will actually process the application. When a person challenges a decision, it is important and administratively fair for the decision-maker to honour promises made about following procedure, unless the decision-maker provides a high level of procedural rights in a different form. Failing to meet legitimate expectations in decision-making may be as simple as an official failing to follow through after agreeing to take action or write a decision letter; it becomes more complex if the authority fails to follow what may be considered a regular procedure, therefore treating an individual in an unfair manner.

When an inmate in a **correctional centre** is charged with an institutional violation, he or she receives a Notice to Offender/Inmate of Disciplinary Hearing Procedure stating procedural expectations for the disciplinary hearing, such as:

> The hearing adjudicator will ask you questions relating to the information they have received and you shall direct your replies to the hearing adjudicator. If you have questions you wish to ask any witnesses that are called at the hearing, you may direct them to the hearing adjudicator who will then ask the witness the question. The hearing adjudicator will allow you to present relevant evidence on your own behalf and it may be checked by the hearing adjudicator to verify its accuracy.

These are procedural expectations for both parties and Ombudsman investigations examine whether those legitimate expectations are met.

Case summary: Alberta Health and Wellness

An individual complained the response from the Chief Medical Officer for **Alberta Health and Wellness** failed to adequately address his views about the need for a certain type of testing for Lyme disease. The Ombudsman's investigation found the initial response provided good general information about the various programs currently being undertaken by health professionals and stakeholders in Alberta to combat Lyme disease. However, the response did not address the complainant's main concern that a certain procedure was not used in Alberta to test for Lyme disease. The Ombudsman's recommendation for a letter addressing the specific concern was accepted.

Case summary: Workers' Compensation Board

An injured worker complained his communication with the **Workers' Compensation Board** (WCB) was being unfairly restricted. The WCB has policies that allow a worker's ability to communicate with the WCB be restricted, typically because of abusive behavior. The type of restriction depends on the severity of the abuse. Workers may be denied the right to phone or visit, and they may be restricted to writing or, in some cases, may be restricted to communicating only through an agent. The WCB policy calls for yearly reviews of the restrictions. The Ombudsman's investigation found that this worker's restriction had been put in place several years earlier and there was no record the restrictions had been reviewed yearly, though the WCB maintained those reviews took place. The Ombudsman determined inadequate reasons had been provided to the worker for continuing the restrictions. The Ombudsman recommended the WCB amend its policies to require that yearly reviews be documented with adequate reasons provided. After re-reviewing this worker's situation, the communication restrictions were lifted.

Case summary: Patient Concerns Resolution Process, Alberta Health Services

Three files involving the **patient concerns resolution process** were concluded in this reporting year, all with similar recommendations calling for a written statement of outcome as required in the *Patient Concerns Resolution Process Regulation*, as well as clear information on the complaint handling process called for in the Regulation and better referral information about the availability of the Alberta Ombudsman's office. Those three files were opened prior to the amalgamation of the nine regional health authorities into one provincial governance board, the Alberta Health Services Board. Numerous different policies and processes had been implemented by the health regions to manage complaints under the Regulation and there were concerns those policies and processes were inconsistent with the Regulation.

In one of the three investigations, the Ombudsman found that patient concerns or complaints had not been separated out from the treatment process. In another investigation, the Ombudsman found that in a six level resolution process in the health region, it was unclear when one level was complete and another was started. In the third investigation, the Ombudsman found that no written statement of outcome had been provided to the complainant, a problem common to all the investigations completed by the Ombudsman.

Considerable changes have occurred in the patient concerns resolution process since amalgamation of all the health regions. Alberta Health Services has appointed one Patient Concerns Officer for the entire province reporting to the Chief Executive Officer, whose responsibility is to review the management of complaints of concerns by the Patient Concerns department of Alberta Health Services. It is now the practice of the Patient Concerns Officer to provide written statements of outcome at the conclusion of a review, and to also provide referral information for the Alberta Ombudsman at the conclusion of a review.

Case summary: ATB Financial

The Ombudsman investigated the administrative fairness of the response a customer received from **ATB Financial** (ATB) about the differences between a mortgage payout statement he received prior to the sale of his property and the one he received subsequent to the sale of his property. A number of administrative errors were identified in the response from ATB:

- there were errors in the dollar amounts of the interest rate differentials quoted in the response;
- there was no explanation for the different rates quoted in the mortgage payout statements;
- there was no explanation of the application of legislation to the customer's situation;
- documents the customer was told were available online were not available online;
- there were wording errors in the response; and
- there was no response to the customer's request to be provided with audit information.

During the course of this investigation, the Ombudsman also identified concerns about the administrative fairness of ATB's complaint process:

- the customer was not referred to ATB's complaint process at the outset;
- the client's initial complaint form was not escalated to the next level in accordance with ATB's complaint process;
- ATB's internal tracking system does not capture all customer complaints, does not appear to have capacity to escalate a complaint to the next level, to allow for follow up, nor to formally close a complaint; and

- there was no investigation report of this particular investigation even though an investigation reporting process had been agreed to as the result of previous Ombudsman investigations.

To address all of these concerns, the Ombudsman recommended a new investigation be conducted into the customer's concerns which would result in a new response addressing the identified errors, and that ATB take steps to ensure timely and accurate information is provided to customers requesting mortgage payout statements. The Ombudsman also recommended the role of the Customer Relations Manager be reviewed and clarified; that ATB's customer complaint and resolution policy be modified to ensure the Ombudsman's role is properly identified as an independent reviewer of last resort; that when the new investigation is conducted of this customer's complaint, the investigation findings and conclusions are well documented; and that consideration be given to upgrading the internal tracking system to add functionality to track, escalate and formally close a complaint.

As a result of the Ombudsman's recommendations, ATB implemented changes to the payout inquiry process and a new review was conducted of the customer's concerns which resulted in a monetary reimbursement to the customer. Regarding ATB's complaint process, the Ombudsman agreed there will be cases where a formalized investigation report may not be necessary for complaints that can be handled informally; however, ATB has been encouraged to implement a formal documentary process when complaints are escalated to the Customer Relations Manager level. ATB also implemented a new management system which should provide a more detailed and collective account of events with respect to complaints.

7. EXERCISING DISCRETIONARY POWER

Although decision-makers enjoy considerable deference which allows them to make their own decisions and determine the scope of their jurisdiction, discretion must still be exercised within a reasonable interpretation of legislation. We examine how the statute, regulation or policy establishes discretion. We review or question discretionary decisions on limited grounds such as evidence of bad faith, discretion used for an improper purpose or the use of irrelevant considerations. There may be more than one way to decide a matter, but whatever the decision, it must be made properly.

It is important to ensure the discretion is not incongruent with the power established in legislation and the person making the decision has the proper authority to exercise discretion. When exercising discretionary decision-making powers, the decision-maker must proceed only under his own legislation, must make a decision and must undertake only what he or she is authorized to carry out.

In many statutes governing department actions, senior executives or an appeal panel may exercise discretionary power. The Ombudsman will comment when he finds errors occurred or when an inappropriate interpretation or use of the delegated discretionary power is identified.

Case summary: College of Alberta Denturists

An applicant for registration as a denturist complained about the decision by the **College of Alberta Denturists** to deny his application claiming inappropriate remarks were made about his character in the written decision. The Ombudsman found there was no evidentiary foundation for the conclusions that were reached regarding character and, as a result, determination of character was not a relevant consideration in the decision regarding eligibility for registration. The Ombudsman's recommendation that the decision document be rewritten to exclude any reference to the character of the applicant was accepted and implemented by the College.

8. WAS THE DECISION REASONABLE?

A reasonable decision should indicate how the decision-maker considered and assessed arguments. To assess a decision's reasonableness, it is important to relate how the evidence was weighed and give reasons about how the decision-maker considered and assessed the arguments and evidence. A reasonable decision is made within the statutory mandate and is grounded in the evidence presented.

The Ombudsman is not a substitute decision-maker; rather, he assesses the reasonableness of decisions based on available evidence. When the Ombudsman concludes a decision was reasonable, he is not making a determination whether the decision was right or wrong or whether a different decision was possible. If the decision is not reasonably based on arguments and evidence presented and accepted by the decision-maker, the Ombudsman may find the decision unreasonable. In the majority of cases, decisions are not found to be unreasonable although there may be administratively unfair components of the decision. In this reporting year, there were no cases of note where the Ombudsman made this finding.

ALTERNATIVE COMPLAINT RESOLUTION

The Alberta Ombudsman established an Alternative Complaint Resolution (ACR) process for the quick resolution of matters that would otherwise be assigned for formal investigation. The feedback from authorities who have been involved in the ACR process has been generally positive.

As in previous years, almost half the ACR issues involved complaints from inmates in correctional centres. For the reporting year April 2010 through March 2011, 22 of the 45 ACR issues addressed were complaints from inmates. The following cases illustrate the suitability of ACR to address certain issues in the correctional system.

Case summary: Alberta Solicitor General and Public Security

An inmate complained his approved special diet requirements were not being adhered to on weekends when only a late morning meal and a supper meal are served in the **correctional centre**. One of the special diet requirements was that the inmate required food in order to take certain medications. An Ombudsman investigator spoke with a Senior Manager and arrangements were made to provide the inmate with a bagged lunch on weekends.

Case summary: Alberta Solicitor General and Public Security

An inmate complained about his personal property being lost during transfers between three **correctional centres** within the province. He submitted request forms reporting the loss of the property at the various correctional centres in question. An Ombudsman investigator spoke with senior management at two of the three correctional centres and the inmate's missing personal property items were located and forwarded to the correctional centre where the inmate was being housed.

Case summary: Alberta Solicitor General and Public Security

An inmate complained about a lack of response to letters he sent raising concerns to the directors of two **correctional centres** in which he had been housed prior to his current placement in a federal penitentiary. An Ombudsman investigator spoke with the two directors in question. The issue at one of the correctional centres involved medication problems. The letter from the inmate had been sent almost two and a half months previously. The director took immediate steps to send a full written response to the inmate. At the second correctional centre, the issue was allegations of unfair treatment by staff. Again the letter from the inmate had been sent over two and a half months previous. The director at that correctional centre commenced formal inquiries into the issues raised by the inmate, and sent a full written response to the inmate once those inquiries were concluded.

There were also communication problems in other areas of government.

Case summary: Patient Concerns, Alberta Health Services

Our Office concluded a number of complaints about the **Patient Concerns** department of Alberta Health Services over the last reporting period. In one case, a family member complained that she sent a letter to Patient Concerns over two months ago but received no response. An Ombudsman investigator learned Patient Concerns never received the letter. The Director of Patient Concerns requested the complainant send the letter directly to her and extended an offer for the complainant to contact her directly in order to discuss the patient concerns resolution process.

The ACR process was utilized in another case to open communication channels when the Ombudsman received a complaint that the responses from a health care manager and a Patient Concerns representative were inadequate. Both the complainant and the Patient Concerns representative were agreeable to attempting to resolve the matter informally, by scheduling a meeting to review what had transpired. The re-opening of communication channels occurred in another case where an individual complained about not receiving a final report, though she acknowledged receiving telephone calls and written interim updates from the Patient Concerns representative dealing with her concerns. An Ombudsman investigator spoke with the Patient Concerns representative and learned further documentation was required from the complainant before a final report could be issued.

The final step in the patient concerns resolution process of Alberta Health Services is a review by the Patient Concerns Officer. Our Office referred a complaint about a lack of a written response from the Patient Concerns Officer to the ACR process. In this situation, the individual complained to our Office that a letter he wrote to the Patient Concerns Officer four months previously had not been responded to, nor was a response received to a follow up letter sent almost three weeks previously. An Ombudsman investigator spoke with the Patient Concerns Officer who issued a final written report to the complainant.

Case summary: College of Physicians and Surgeons of Alberta

A relative of a now-deceased patient complained the **College of Physicians and Surgeons of Alberta** (the College) failed to follow through on an undertaking to resolve a concern the patient registered about a doctor who failed to complete a certain form that needed to be filed with a government agency. An Ombudsman investigator spoke with the complaints branch of the College and it was agreed that the College communications system had fallen short. The College renewed its efforts to resolve the matter. The doctor eventually filled in the required form and the College reviewed its processes to avoid similar communication problems in the future.

Case summary: Alberta Children and Youth Services

The Ombudsman received a complaint from a mother about the lack of response following meetings with senior management of **Alberta Children and Youth Services** regarding the apprehension of her children, and a failure to respond to telephone calls. An Ombudsman investigator spoke with a Senior Manager of Child Intervention who agreed to provide a written response to the complainant addressing the concerns the mother raised.

Case summary: Alberta Employment and Immigration

A training provider complained about the suspension of a funding contract and the refusal to pay for training services that had been provided which resulted in a significant cash-flow shortage. An Ombudsman investigator spoke with a representative of **Alberta Employment and Immigration** and learned that there was a delay in the processing of student applications due in part to computer software problems in the department. Arrangements were made to review the outstanding applications for the training provider's program and shortly thereafter, the funds were released to the provider.

Case summary: Maintenance Enforcement Program

Our Office was involved in resolving a number of issues relating to the **Maintenance Enforcement Program** (MEP) using the ACR process. There were two situations that illustrate the effective application of the ACR process. In the first case, a debtor complained about not receiving a response to a letter he submitted three and a half months previously to MEP's Complaint Review Process requesting that his account be updated to reflect that he paid his account in full. He made a number of follow up contacts with MEP, all with no response to his request. An Ombudsman investigator spoke with a Senior Manager at MEP who determined the original letter from the debtor had been misplaced. A letter was sent to the debtor apologizing for the delay in responding and providing the requested update on the status of the account.

In another case, a debtor reported that the child was no longer with the creditor and requested the account be updated to reflect that. MEP responded promptly to indicate a child status review would commence and his account would be adjusted, depending on the results of the review. Almost four months later, a letter was sent to the debtor from MEP advising his account was now closed, but providing no information as to the results of the child status review. An Ombudsman investigator spoke with a Senior Manager at MEP who acknowledged the letter advising of account closure failed to provide the requested information. A letter was sent to the debtor advising of the results of the child status review and also advising that in the course of reviewing the file to prepare the response, it was discovered that an overpayment occurred and a refund in the name of the debtor was being processed.

INFORMAL RESOLUTION

Another process designed for timely resolution is the **Informal Resolution** (IR) process. IR is attempted with oral inquiries where the intake officer believes a caller's issues can be resolved through assistance from our Office. The intent is not to advocate for the position of the caller but to assist in communication to arrive at a timely resolution.

Case summary: Patient Concerns, Alberta Health Services

On September 13, 2010, the delivery of correctional health care services in the provincial correctional centres was transferred to Alberta Health Services. The Adult Centre Operations Branch was not provided with contact numbers for the **Patient Concerns** department, which included the Patient Concerns Officer, until the beginning of November 2010. Only then were the provincial correctional centres able to input the access numbers for the Patient Concerns Department into their inmate telephone systems.

This resulted in calls to our Office from inmates who were unaware of the avenues of review available to them regarding health care services. Our Office was instrumental in providing information about accessing the patient concerns resolution process of Alberta Health Services for a number of inmates who felt they were not receiving adequate medical attention.

Case summary: Alberta Employment and Immigration

An individual complained about the non-receipt of an income support benefit cheque from **Alberta Employment and Immigration** after fulfilling all required expectations. Our intake worker contacted a supervisor and learned the income support unit requires a medical report. The supervisor undertook to contact the individual to review the outstanding requirements.

Case summary: Alberta Employment and Immigration

An individual complained income support benefits had been authorized 13 days previously by **Alberta Employment and Immigration**, but he had not received the funds either in the mail or via direct deposit. Our intake officer spoke with the supervisor who contacted the individual and made arrangements to have the cheque authorized for pick up from the income support office.

Case summary: Workers' Compensation Board

An injured worker complained a request for an MRI that had been submitted over a month previously was not being processed by the **Workers' Compensation Board** (WCB). Our intake officer contacted WCB and learned that the claim file had been closed about a month prior to the receipt of the MRI requisition, and the requisition was simply filed on the closed file rather than referred to the case manager for an assessment. Our intake officer was subsequently advised the case manager conducted the review of the MRI requisition and determined the medical information on file needed to be re-examined.

Case summary: Solicitor General and Public Security

An inmate called on his release date about 45 minutes prior to the scheduled departure of his transportation to a court-ordered treatment program to say the **correctional centre** was being locked down and he was told he could not be taken by staff to his bus. Our intake officer spoke with the acting director who agreed to address this with the inmate immediately.

IN CONCLUSION

The Alberta Ombudsman continues to work with authorities to improve the administrative fairness of their processes. Their cooperation and willingness to rectify administrative unfairness found in Ombudsman investigations illustrates their commitment to the administratively fair delivery of services, programs and decision-making processes to Albertans.

FEATURED CASES

HEALTH PROFESSION COLLEGE/ALBERTA HEALTH SERVICES

A series of complaints from individuals caused the Ombudsman to launch a lengthy and complex investigation which resulted in the complete overhaul of the administrative organization of a **health profession college** (the College). In addition, **Alberta Health and Wellness** is making changes in how it oversees health profession colleges.

The Ombudsman received 11 complaints about a College operating under the *Health Professions Act* (HPA). Health professions in Alberta, such as dentists, doctors, nurses, medical technologists, social workers, etc., are required to establish colleges to accomplish purposes such as: setting standards of practice; setting education and training standards; registering members; and investigating and hearing complaints from the public.

The complaints about this College came from members and from non-members who worked in the same industry. The principal complaint was that non-regulated employees working in the industry were required to pay registration fees to the College even though they did not perform duties that were restricted or required them to join the College. It is not unusual for people to work in a health industry without the need to be regulated. For example, family members, orderlies or hired companions may transfer a person from a bed to a wheelchair. That function may fall within the job duties of the nursing profession, but a person does not have to join the profession to do that function. However, functions that require specific training and present a significant health and safety risk are likely to be regulated and are administered by regulated members of a health profession college, who must be registered.

Upon investigation, the Ombudsman learned from various sources that a split had occurred in the membership of the College. Questions arose about the authority of the College to run some of its programs and about whether the College had properly organized itself under the HPA. The Ombudsman made the decision to expand the scope of the investigation and notified the College and Alberta Health and Wellness that the expanded investigation would look more generally at the administration of the College and the monitoring role of Alberta Health and Wellness.

In order to assess the College, the Ombudsman used two measuring sticks, or in this case "chains." The first chain is identified on the Ombudsman's website (www.ombudsman.ab.ca) as the "chain of legislative authority" which creates an agency's authority to make a decision. The second chain is the "chain of accountability" identified in the Public Agencies Governance Framework (Framework) published by the Alberta Government in February 2008. While health profession colleges are not public agencies as described by the Framework, the "chain of accountability" does identify best practices. The Framework says through formalized documents, an agency should describe and explain its roles and responsibilities.

A health profession college is established when a schedule related to that health profession college is proclaimed under the HPA. The Ombudsman's

investigation commenced with an examination of the "chain of legislative authority." It looked at the actions of the College as it attempted to follow the requirements established by the HPA, the governing regulation and the College's own Schedule attached to the HPA. The investigation established the College did not properly establish its bylaws, policies, standards of practice or its code of ethics. As a result, the Ombudsman recommended that the College start from the beginning and reconsider and pass every link of the chain. Among the problems: it was impossible to tell from the records when motions were passed and what the motion was; it was impossible to establish that a quorum of Council approved most decisions; it was impossible to demonstrate advice and comments from the Minister of Alberta Health and Wellness were considered; it was impossible to demonstrate that members of the College were consulted on a variety of issues relating to governance; and amendments to bylaw and policy were not tracked.

Looking at the principal complaint, that being the requirement for registration and payment of fees by non-regulated members, the Ombudsman concluded that mandatory registration was not allowed by legislation and that fees were not properly established in bylaw.

Moving on to the "chain of accountability," even if the College Council had properly passed its establishing bylaws and policies, it was still impossible to demonstrate that Council considered and approved major programs or everyday business. Motions were not recorded and it could not be established a quorum of Council voted on motions. It could not be established that elections of Council members was fair. There was a general lack of transparency in the business of the College. Remuneration of the executive officers was not being reported to the members. In all, the Ombudsman made 46 recommendations aimed at making the administration of the College more administratively fair.

In addition, the Ombudsman made 13 recommendations to Alberta Health and Wellness aimed at improving its oversight of health profession colleges. Some of the recommendations were: that the Department complete its guidebook aimed at assisting health profession colleges to fairly and accurately present information in their annual reports; that the Department review all annual reports to ensure they demonstrate the accountability required by Section 4 of the HPA; that the Department ensure health profession colleges fulfill their contractual obligations to account for the funds when they receive government grants; and that the Department consider how it will manage and review complaints about health profession colleges on behalf of the Minister.

The College and Alberta Health and Wellness accepted all of the Ombudsman's recommendations and are in the process of putting them into practice. The Ombudsman is monitoring the implementation of the recommendations.

LOCAL AUTHORITIES PENSION PLAN

The Local Authorities Pension Plan (LAPP) is a provincial board that administers pension plans for about 200,000 former employees of public sector

organizations such as municipalities, health care sector and school boards. The primary issue for the complainant was that he had not been informed when he took his pension early that coordinating his benefits with the Canada Pension Plan and Old Age Security would result in his benefits from LAPP being reduced when he reached 65.

The LAPP Board heard the complainant's appeal and denied it, quoting sections of legislation. The Ombudsman's investigation included a review of the appeal process and found that the Board heard evidence that did not support the complainant's position. The investigation also found that the Board decision was administratively unfair in other ways. Merely quoting legislation did not demonstrate that the complainant's principal argument had been considered. A decision should speak for itself without the need for additional interpretation. It was not up to the reader to speculate on how sections of legislation applied to the facts of the appeal. The decision-maker should clearly make the connection. The Ombudsman found several other elements of unfairness in the decision including: the authority of the Board to hear the appeal in the first place was not cited; a list of evidence heard was not provided; the issues were not listed; key facts were not identified; the legislation cited did not relate to the main argument; and the decision letter was unclear in its meaning.

While the Board decision was recorded and presented in an administratively unfair manner, the Ombudsman found evidence was presented to the Board which could allow it to reach the conclusion it did. Therefore, the Ombudsman concluded rehearing the matter would extend uncertainty for the complainant, but not change the result. He recommended the Board issue a clarification of its decision, which it did.

Moving beyond the complainant's individual situation, the Ombudsman pointed out to the LAPP that its process was complicated, which made it susceptible to unfairness. He concluded the LAPP had the right to devise its own process, but he pointed out some of the problems with the existing process including: a sub-committee heard the evidence, but reaching a conclusion was reserved for the Board as a whole; assurance needed to be provided that a record of all the evidence was presented to the Board; administrative fairness required that the minutes of the sub-committee be provided to all parties for comment, prior to being reviewed by the final decision-maker; existing policies made it unclear if the Board expected to review only "relevant" information or the entire record, as administrative fairness requires; and the decision was made in a business meeting format which requires a motion taking a position for or against an appeal. That format could be construed as attempting to prejudice the decision of the Board acting as an impartial final decision-maker. The Ombudsman also found the delegation of authority which allowed the Board to reach a decision on appeals was over a decade old. Alberta government policy, outlined in the Public Agencies Governance Framework, suggests such delegations should be reviewed every three years.

The LAPP has decided to review its process and make an appeal committee (similar to the sub-committee under the old process) the final decision-maker. Legal counsel has been retained to determine the best process for the appeal committee to follow.

FINANCIAL STATEMENTS

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As at March 31, 2011

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FINANCIAL STATEMENTS

AUDITOR GENERAL *Alberta*

Independent Auditor's Report

To the Members of the Legislative Assembly

Report on the Financial Statements
I have audited the accompanying financial statements of the Office of the Ombudsman, which comprise the statement of financial position as at March 31, 2011, and the statements of operations and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements
Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility
My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion
In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Ombudsman as at March 31, 2011, and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

[Original signed by Merwan N. Saher]
CA
Auditor General

June 21, 2011
Edmonton, Alberta

STATEMENT OF OPERATIONS
YEAR ENDED MARCH 31, 2011

	2011		2010
	Budget	Actual	Actual
Revenues			
Other Revenue	$ -	$ 292	$ 504
	-	292	504
Expenses			
Voted			
Salaries, Wages and Employee Benefits	2,484,000	2,353,868	2,327,150
Supplies and Services *(Note 2)*	404,000	312,564	417,732
	$ 2,888,000	$ 2,666,432	$ 2,744,882
Non Budgetary			
Valuation Adjustment			
Provision for (Decrease in) Vacation Pay	-	15,874	(20,550)
	-	15,874	(20,550)
Net Operating Results	$ (2,888,000)	$ (2,682,014)	$ (2,723,828)

The accompanying notes and schedules are part of these financial statements.

STATEMENT OF FINANCIAL POSITION
AS AT MARCH 31, 2011

	2011	2010
ASSETS		
Cash	$ 400	$ 400
Accounts Receivable	215	1,095
Advances	5,800	6,300
Tangible Capital Assets *(Note 3)*	11,029	14,368
	$ 17,444	$ 22,163
LIABILITIES		
Accounts Payable and Accrued Liabilities	$ 179,866	$ 112,394
Accrued Vacation Pay	230,889	215,015
	410,755	327,409
NET LIABILITIES		
Net Liabilities at Beginning of Year	(305,246)	(320,988)
Net Operating Results	(2,682,014)	(2,723,828)
Net Transfer from General Revenues	2,593,949	2,739,570
Net Liabilities at End of Year	(393,311)	(305,246)
	$ 17,444	$ 22,163

The accompanying notes and schedules are part of these financial statements.

STATEMENT OF CASH FLOWS
YEAR ENDED MARCH 31, 2011

	2011	2010
Operating Transactions		
Net Operating Results	$ (2,682,014)	$ (2,723,828)
Non-cash items included in Net Operating Results		
Amortization of Tangible Capital Assets	3,339	14,978
	(2,678,675)	(2,708,850)
Decrease (Increase) in Accounts Receivable	880	(1,095)
Decrease (Increase) in Advances	500	(500)
(Decrease)/Increase in Accounts Payable and Accrued Liabilities	67,472	(8,575)
(Decrease)/Increase in Accrued Vacation Pay	15,874	(20,550)
Cash Applied to Operating Transactions	(2,593,949)	(2,739,570)
Financing Transactions		
Net Transfer from General Revenues	2,593,949	2,739,570
Increase in Cash	-	-
Cash, Beginning of Year	400	400
Cash, End of Year	$ 400	$ 400

The accompanying notes and schedules are part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS
YEAR ENDED MARCH 31, 2011

NOTE 1 - AUTHORITY AND PURPOSE

The Alberta Ombudsman is an officer of the Legislature who operates under the authority of the *Ombudsman Act*. The net cost of the operations of the Office of the Ombudsman (the Office) is borne by the General Revenue Fund of the Province of Alberta. Annual operating budgets are approved by the Standing Committee on Legislative Offices.

The Office promotes fairness in public administration within the Government of Alberta, designated professional organizations and the patient concerns resolution process of Alberta Health Services.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES

These financial statements are prepared in accordance with Canadian public sector accounting standards.

a) Reporting Entity

The reporting entity is the Office of the Ombudsman which is a legislative office, for which the Alberta Ombudsman is responsible.

The Office operates within the General Revenue Fund. The Fund is administrated by the Minister of Finance and Enterprise. All cash receipts of the Office are deposited into the Fund and all cash disbursements made by the Office are paid from the Fund. Net transfer from General Revenues is the difference between all cash receipts and all cash disbursements made.

b) Basis of Financial Reporting

Revenues

All revenues are reported on the accrual basis of accounting. Cash received for which goods or services have not been provided by year end is recorded as unearned revenue.

Expenses

Expenses represent the costs of resources consumed during the year on the Office's operations.

Pension costs included in these statements comprise the cost of employer contributions for current service of employees during the year.

Certain expenses, primarily for office space, incurred on behalf of the Office by government departments are not reflected in the Statement of Operations but are disclosed in Schedule 2.

Valuation Adjustments

Valuation adjustments represent the change in management's estimate of future payments arising from obligations relating to vacation pay.

Assets

Tangible capital assets are recorded at historical cost and amortized on a straight-line basis over the estimated useful lives of the assets as follows:

Computer hardware and software	3 years
Furniture and other office equipment	10 years

Assets are capitalized if their useful life is expected to be longer than 1 year and purchase price is $5,000 or greater.

Amortization of Capital Assets

A full year of amortization is taken in the year of acquisition.

Net Liabilities

Net liabilities represent the difference between the carrying value of the assets of the Office and its liabilities.

Valuation of Financial Assets and Liabilities

Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

The fair values of cash, accounts receivable, advances, and accounts payable and accrued liabilities are estimated to approximate their carrying values because of the short term nature of these instruments.

NOTE 3 - TANGIBLE CAPITAL ASSETS

	2011			2010
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Computer hardware and software	$ 41,945	$ 41,945	$ -	$ -
Furniture and other office equipment	33,387	22,358	11,029	14,368
	$ 75,332	$ 64,303	$ 11,029	$ 14,368

NOTE 4 - LEASE OBLIGATIONS OR COMMITMENTS

The Office leases certain equipment under operating leases that expire on various dates to 2014. The aggregate amounts payable for the unexpired terms of these contractual obligations are as follows:

2012	$ 4,391
2013	4,176
2014	1,972
Total	$ 10,539

NOTE 5 - DEFINED BENEFIT PLAN (IN THOUSANDS)

The Office participates in the multi-employer Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of $235 for the year ended March 31, 2011 (2010 – $212).

At December 31, 2010, the Management Employees Pension Plan reported a deficiency of $397,087 (2009 deficiency $483,199) and the Public Service Pension Plan reported a deficiency of $2,067,151 (2009 deficiency $1,729,196). At December 31, 2010 the Supplementary Retirement Plan for Public Service Managers had a deficiency of $39,559 (2009 deficiency $39,516).

The Office also participates in the multi-employer Long Term Disability Income Continuance Plan. At March 31, 2011, the Management, Opted Out and Excluded Plan had an actuarial surplus of $7,020 (2010 surplus $7,431). The expense for this plan is limited to the employer's annual contributions for the year.

NOTE 6 - APPROVAL OF FINANCIAL STATEMENTS

These financial statements were approved by the Senior Financial Officer and the Ombudsman.

SCHEDULE 1: SALARY AND BENEFITS DISCLOSURE
YEAR ENDED MARCH 31, 2011

	2011				2010
	Base Salary[1]	Other Cash Benefits[2]	Other Non-Cash Benefits[3]	Total	Total
Senior officials					
Ombudsman[4]	$ 227,627	$ 1,750	$ 54,116	$ 283,493	$ 288,004
Deputy Ombudsman	$ 143,994	$ 1,750	$ 34,577	$ 180,321	$ 180,853

(1) *Base salary includes regular base pay.*

(2) *Other cash benefits include vacation payouts and lump sum payments. There were no bonuses paid in 2011.*

(3) *Other non-cash benefits include the employer's share of all employee benefits and contributions or payments made on behalf of employees including pension, health care, dental coverage, group life insurance, short and long-term disability plans, professional memberships and tuition fees.*

(4) *Automobile provided, no dollar amount included in other non-cash benefits.*

SCHEDULE 2: ALLOCATED COSTS

YEAR ENDED MARCH 31, 2011

	2011				2010
		Expenses Incurred by Others	Valuation Adjustments[3]		
Program	Expenses[1]	Accommodation Costs[2]	Vacation Pay	Total Expenses	Total Expenses
Operations	$ 2,666,432	$ 250,480	$ 15,874	$ 2,932,786	$ 2,984,095

(1) *Expenses - Directly Incurred as per Statement of Operations, excluding valuation adjustments.*

(2) *Costs shown for Accommodation, allocated by square footage.*

(3) *Valuation Adjustments as per Statement of Operations.*

CONTACTS

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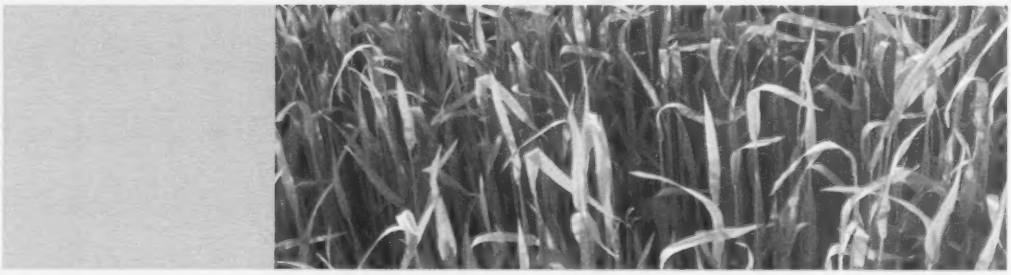
Throughout North America Alberta call toll free 1-888-455-2756

Online complaint form available on the website: **www.ombudsman.ab.ca**



ALBERTA OMBUDSMAN 2010/2011 ANNUAL REPORT

Focused on Fairness